

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5864 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 - No

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P B AMBALIA

Versus

STATE OF GUJARAT  
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Appearance:

MR GIRISH PATEL for Petitioner  
MR VM PANCHOLI, AGP Respondent No. 1  
RULE SERVED for Respondent No. 2,10,11  
DELETED for Respondent No. 9  
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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/07/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner belonging to a Scheduled Caste has challenged the promotions given to respondent Nos. 3 to 11 in the cadre of Assistant Directors, Class-I (Chemistry Group) in Forensic Science Laboratory. Respondent Nos. 3 to 8 were promoted by order dated

Nil-3-1983 at Annexure "D" to the petition. Respondent Nos. 9 to 11 came to be promoted by order dated 23.8.1985 at Annexure "G" to the petition. The petitioner has also prayed in the alternative that the respondents may be directed to promote the petitioner from the date on which the petitioner would have been entitled in 1985 and to grant all consequential benefits.

2. Although in the petition the petitioner had raised the controversy on a wider canvas, it is not necessary to consider all those contentions as the respondents have admitted in the reply affidavit that the reservation policy is applicable while giving promotions to the cadre of Assistant Directors (Chemistry Group) in Forensic Science Laboratory. The respondents have further pointed out that when respondent Nos. 3 to 8 were selected for and promoted to the posts of Assistant Director in the year 1983, the petitioner had not completed five years service as required by the recruitment rules and, therefore, the petitioner was not found eligible for such consideration.

3. There is considerable substance in the said defence urged by the respondents. Promotion to the post is governed by statutory recruitment rules and the rules specifically provide that Senior Scientific Assistants were required to put in five years service. The petitioner who was directly recruited to the post of Senior Scientific Officer with effect from 21.3.1979 had put in hardly four years service when the case of respondent Nos. 3 to 8 was considered. Therefore, the decision of the respondents not to consider the petitioner for such promotion when respondent Nos. 3 to 8 were selected and promoted cannot be said to be illegal or unconstitutional.

4. As regards the petitioner's contention that in any view of the matter he ought to have been promoted alongwith respondent Nos. 9 to 11 on 23.8.1985, the respondents have stated that in the year 1985, the petitioner was eligible for promotion and, therefore, his case was considered as a Scheduled Caste candidate leaving aside the claim of many persons senior to the petitioner. The petitioner was found suitable for promotion and even the petitioner's name was also included in the select list in accordance with the petitioner's seniority. The said select list was operated and respondent Nos. 9 to 11 were promoted on 23.8.1985. However, in view of the wide spread agitation against the policy of reservation and the settlement arrived at by and between the Government and the

Associations and Unions of the Government servants, the Government in the General Administration Department issued directions to cancel all the existing select lists and to prepare fresh select list keeping in view the terms of settlement. It is, therefore, stated on behalf of the respondents that the select list of 1985 was cancelled and a fresh select list was prepared in the month of June, 1987. The petitioner's name was included in the said select list and on that basis the petitioner has been promoted as Assistant Director on 10.8.1988.

The submission made on the of the petitioner is that since the select list was admittedly prepared wherein the petitioner's name was included, the petitioner was also required to be promoted at that time on 23.8.1985. The argument of Mr Yajnik for the petitioner is that as per the roster formula the first vacancy goes to a Scheduled Tribe candidate, vacancies No. 2 and 3 go to unreserved candidates and vacancy No. 4 goes to a Scheduled Caste candidate. Mr Yajnik points out that out of respondent Nos. 9 to 11 none of the officers belong to any reserved category whether Scheduled Caste or Scheduled Tribe and that, therefore, after promoting respondent Nos. 9 and 10 in vacancies No. 2 and 3 in the roster, it was the petitioner's turn to be promoted as Assistant Director and the petitioner, therefore, could have been one of the three officers to be promoted as Assistant Director as on 23.8.1985.

5. It is not possible to deal with this contention in view of the fact that there is no specific pleading in the petition and, therefore, the respondents have not been able to meet with such a contention which is being raised for the first time at the hearing of this petition. In this view of the matter, this Court would not test the promotion order dated 23.8.1985 on the basis of the aforesaid contention, but would rather leave to the respondents to reexamine the question in light of the aforesaid submission.

6. In view of the above discussion, this petition is disposed of with a direction that the respondents shall reexamine the question of the petitioner's seniority in the cadre of Assistant Directors in light of the question whether the petitioner was required to be promoted on 23.8.1985 alongwith other officers from the cadre of Senior Scientific Assistants (Chemistry Group). This reexamination will be done keeping in view the roster points for promotion to the posts of Assistant Directors (Chemistry Group). This exercise shall be undertaken and

completed within a period of three months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

7. It is clarified that the petitioner's challenge to the promotion of respondent Nos. 3 to 8 in the year 1983 is negatived and that the question of challenge to the petitioner's case for promotion in August, 1985 is kept open and is to be decided in light of the observations made in this judgment. There shall be no order as to costs.

Sd/-

July 5, 1999 (M.S. Shah, J.)

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